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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/446,314	12/20/1999	Yasumasa Yamakoshi	0216-0429P	2146
2292 7590 03/18/2008 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747				
EXAMINER ZEMEL, IRINA SOPHIA				
ART UNIT		PAPER NUMBER		
1796				
NOTIFICATION DATE		DELIVERY MODE		
03/18/2008		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

[mailroom@bskb.com](mailto:mailroom@bskb.com)

# Office Action Summary

## Application No.

09/446,314

## Applicant(s)

YAMAKOSHI ET AL.

## Examiner

Irina S. Zemel

## Art Unit

1796

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
- Paper No(s)/Mail Date: \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kusano in combination with Encyclopedia.

The rejection of claim 1 stands as per reasons of record. Insofar as new claim 8, the claims is written in a –product-by-process format, thus the patentability of the claimed product depends only on the product characteristics. As discussed in the previous office actions, since it would have been obvious to use steps of centrifugal dehydration similar to the centrifugal dehydration disclosed a suitable in the instant specification in the process disclosed in Kusano, there is a reasonable believe that the products obtained by such method would have been patentable indistinguishable from the product as claimed. The burden is shifted to the applicants to provide factual evidence as t the patentable differences of the claimed product and the obvious products obtained by the process of Kusano (or as modified in view of Encyclopedia).

Claims 2-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kusano in combination with US Patent 4,423,207 to Flock et al., (hereinafter "Flock"). The disclosure of Kusano has been discussed in detail in the several previous office acts. While the Kusano reference does not disclose the claimed steps of gravity dehydration or filtration dehydration, substituting the expressly disclosed steps of dehydration by dehydration rolls in the process of Kusano with gravity dehydration

would have been obvious from the expressed disclosure of Flock. Flock expressly discloses that in a process of dehydrating water containing porous gravity dehydration works equivalently well as the roll dehydrating devices. See, for example, column 5, lines 145-22 of Flock. Thus, the method as claimed in the instant application would have been obvious from the combined disclosure of the cited references absent showing of unexpected results that can be specifically attributed to the claimed dehydration steps. Insofar, there is no convincing evidence of unexpected results on the record as none of the comparative results directly compare the process of Kusano with the claimed process.

### ***Response to Arguments***

Applicant's arguments filed 12-20-2007 have been fully considered but they are not persuasive. The applicants arguments regarding rejection over Kisano in view of Encyclopedia re noted, however, those arguments are only relevant to the extent this rejection still stands insofar as the product claims 1 and 8 (since the rejection over Kusano in view of Encyclopedia is withdrawn with respect to the process claims in view of the applicants amendments to the base claim 2). In this respect the applicants argue that the product obtained by the claimed method exhibit unexpectedly improved oil absorbency s compared to the products obtained by the process of Kusano. The applicants refer to examples 1-5, 9-11, 13-16 which are obtained in accordance with the claimed process and compare it to the comparative examples of 4 and 5. The applicants state on page 11 of their response that the examples of Kusano closely

correspond to the comparative examples 4 and 5 of the instant application. The examiner can NOT agree with those statement. In the Kusano process, the only dehydration step is the step of twin roll dehydration to 45 % of water content. The instant comparative examples 4 and 5 first employ the step of dehydration by gravity dehydration to 75 % and impact crushed (which, in term, caused additional dehydration). Only after those steps the wet crumbs were further dehydrated to the 43% water content with the use of twin roll dehydrator. It is expressly noted that the process disclosed in comparative examples 4 and 5 FULLY correspond to the claimed process as having all the required steps (and having some additional steps such as twin roller dehydration step) which steps are NOT precluded by the claimed open language process. In other words, the comparative examples are also within the scope of the claimed process, in which case, it can not be even asserted to be an evidence of unexpected results or patentable difference for the claimed invention, since the comparative results is a part of he claimed invention.

Thus, the applicants did not provide any evidence to the patentable distinction of the porous product as obtained by the process of Kusano and as claimed.

Applicant's arguments with respect to claims 2-7 to the process have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Irina S. Zemel whose telephone number is (571)272-0577. The examiner can normally be reached on Monday-Friday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on (571)272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/ Irina S. Zemel/  
Primary Examiner, Art Unit 1796

/I.Zemel/ Irina S. Zemel  
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ISZ